CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

4 MAR 1981

The Honorable George Bush
President of the Senate
Washington, DC 20510

Dear Mr. President:

Submitted herewith, pursuant to the provisions of 5 U.S.C. 552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act during calendar year 1980.

During 1980, 2,992 requests were logged and put into processing by the Agency, of which 1,212 were handled under the Freedom of Information Act. Several hundred additional request letters were received during the year but not formally processed pending receipt of additional information from the requesters. These were, without exception, requests for access to personal records, which, under the Agency's regulations, are usually processed under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) rather than the Freedom of Information Act. Production/workload statistics for CY 1980 are presented below. The figures given for cases carried over from the previous year have been adjusted to conform with our computer data. (These statistics are necessarily tentative inasmuch as we sometimes have to reactivate "closed" cases or are able to "close out" a case retroactively.)

	FOIA	PA	EO*	Totals	(%)
Workload					
Cases carried over from 1979	1182	1166	303	2651	(46.98)
Cases logged during 1980	1212	1614	166	2992	(53.02)
Totals:	2394	2780	469	5643	
Actions taken					
Granted in full	161	77	63	301	(11.61)
Granted in part	150	293	121	564	(21.76)
Denied in full	113	38	34	185	(7.14)
No records found	108	868	0	976	(37.65)
No CIA records found	10	33	0	43	(1.66)
Canceled	353	16	2	371	(14.31)
Withdrawn	39	9	1	49	(1.89)
Referred elsewhere	63	2	2	67	(2.58)
Early appeal	16	9	0	25	(0.96)
Early litigation	10	1	0	11	(0.42)
Totals:	1023	1346	223	2592	
Cases carried over to 1981	1371	1434	246	3051	
Change in backlog	+189	+268	-57	+400	(15.09)

*These are requests processed under the mandatory classification review provision of Executive Order 12065. Most of them are either referrals from the Presidential libraries or declassification requests from other federal agencies.

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

14 MAR 1981

The Honorable Thomas P. O'Neill
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

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During 1980, 2,992 requests were logged and put into processing by the Agency, of which 1,212 were handled under the Freedom of Information Act. Several hundred additional request letters were received during the year but not formally processed pending receipt of additional information from the requesters. These were, without exception, requests for access to personal records, which, under the Agency's regulations, are usually processed under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) rather than the Freedom of Information Act. Production/workload statistics for CY 1980 are presented below. The figures given for cases carried over from the previous year have been adjusted to conform with our computer data. (These statistics are necessarily tentative inasmuch as we sometimes have to reactivate "closed" cases or are able to "close out" a case retroactively.)

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In addition to the aforementioned requests, the Agency also responded during CY 1980 to many other requests for copies of unclassified CIA publications, such as maps, reference aids, monographs, and translations of foreign language broadcasts and articles from the foreign press--either directly or by referring the requesters to those government agencies (the Library of Congress, the Government Printing Office, and the National Technical Information Service of the Department of Commerce) responsible for the distribution of these products.

You will note that our backlog of unanswered requests increased by 400 cases during CY 1980. This increase occurred despite the fact that the manpower devoted to these programs was more than 29 percent greater than for the previous year, CY 1979.* The principal reason for this phenomenon was the extraordinary demands placed upon the Agency by those cases which have gone into litigation. In order to meet court-imposed deadlines, it has been necessary in many instances to divert personnel from the processing of initial requests or administrative appeals. We did succeed, nonetheless, in reducing the backlog of administrative appeals by approximately 20 percent during the course of the year.

Because of the nature of the requests that we receive, the complexity of our compartmented and decentralized systems of records, and the sensitivity of the information contained therein, the amount of manpower required of the CIA to process a typical request is probably greater than for any other federal agency. Needless to say, the resources that the Agency can afford to allocate to these programs are limited if we are to carry out effectively our foreign intelligence mission. Moreover, even if additional manpower could be made available without impairing our other vital activities, the problem would still not be totally solved. Expertise is required of the reviewer. He must, in many instances, have detailed knowledge of the circumstances under which information was collected in order to make a judgment on whether its disclosure might jeopardize intelligence sources and methods. Thus, only those individuals with the appropriate background knowledge and experience can be entrusted with the review of records. Accordingly, as long as the volume of requests we receive remains at a high level, it appears unlikely that we will be able to achieve any substantial reduction of the processing backlog or significantly shorten the time required for responses.

The public benefit resulting from this expenditure of tax monies by the CIA has not, in our judgment, been commensurate. Some of the requests that the Agency has processed have led to the release of information of interest to certain segments of the public. Such instances have, however, been relatively rare. Most of the records held by the CIA are classified under the criteria of Executive Order 12065 and/or involve intelligence

*Subsequent to submitting our report to the Congress for CY 1979, we discovered that the reporting on manpower resources had been incomplete. Approximately 110 man-years of labor were allocated to processing requests, appeals, and litigation during CY 1979, rather than the 100 man-years cited in our report.

sources and methods. As such, this information is exempted from access under the Freedom of Information Act. Whenever feasible, segregable portions of otherwise exempt records are released, but the public benefit arising from the disclosure of fragmentary and often inaccurate raw intelligence data is dubious, at best.

As has been emphasized in our previous reports to the Congress and in testimony by former DDCI Frank Carlucci, we have also been concerned with the effect of the Freedom of Information Act on the willingness of individuals and foreign governments to cooperate with the United States. In order to operate effectively, a foreign intelligence organization must be able to convince the individuals and organizations from whom it seeks information and other forms of cooperation that the information that they provide and the fact of their collaboration will be kept secret. Frankly, this is a difficult task when it is well known throughout the world that the CIA is subject to the provisions of the Freedom of Information Act. We can assure our sources, of course, that the exemptions provided by subsections (b)(1) and (b)(3) of the Act protect from disclosure both classified material and information relating to intelligence sources and methods. We can also point out that, through the use of multiple layers of review, we have endeavored to ensure that such information is never released. It is very difficult, however, to convince our sources and potential sources that they have nothing to fear when they are constantly reading sensationalized accounts in the press concerning the CIA and its alleged operations. Although it is rare indeed that such stories have been based upon actual Freedom of Information releases, there is a tendency in the minds of the persons who have been asked to place their trust in the CIA's ability to keep confidences to attribute them to the Act. The Freedom of Information Act has become symbolic of openness in government and leaks of sensitive information. Moreover, the more sophisticated and informed of these persons are fully aware that human error can and has resulted in the release of classified information under the Freedom of Information Act, despite our precautions. They are also aware that the courts can overrule the Agency's denials and require the CIA to release information that is properly classified and/or involves sensitive intelligence sources and methods. It is not surprising under these circumstances that confidence in the CIA's ability to protect secrets has eroded, and that our ability to collect information essential to the national security of the United States has been somewhat impaired.

In many other countries, including democracies, the mere existence of a secret intelligence service is regarded as a state secret; yet the CIA is expected to engage in a full range of intelligence activities and, at the same time, to respond to requests for its records. We think that even our critics will agree that an effective foreign intelligence service is essential to the survival of our nation in the nuclear age. The Freedom of Information Act, we submit, has hindered our ability to perform our vital mission. While we do not question the principle that U.S. citizens should

have the right to know what their government is doing and has done in the past, we firmly believe that an exception should be made in the case of the CIA. It is hoped, therefore, that the Congress will see fit to exempt the Agency and its records from the provisions of the Freedom of Information Act.

Sincerely,

/s/

Max Hugel
Deputy Director
for
Administration

Enclosure

STAT IPD/ [redacted] 20 February 1981

Distribution:
Orig. - Adse. w/report
1 - IPD Chrono
1 - IPD Subject w/report
1 - DDA w/report
1 - OGC w/report
1 - OLC w/report
1 - OIS w/report
1 - DDS&T/FOIO w/report
1 - DDO/IRO w/report
1 - NFAC/FOIO w/report
1 - DDO/IMS/FPLG w/report
1 - O/DCI/FOIO w/report
1 - O/PA w/report

FREEDOM OF INFORMATION ACT

ANNUAL REPORT TO THE CONGRESS FOR THE YEAR 1980

1. Total number of initial determinations not to comply with a request for records made under subsection 552(a): 263

2. Authority relied upon for each such determination:

(a) Exemptions in 552(b):

Exemption invoked	Number of times (i.e., requests) invoked
(b)(1)	214
(b)(2)	8
(b)(3)	240
(b)(4)	10
(b)(5)	9
(b)(6)	73
(b)(7)	5
(b)(8)	0
(b)(9)	0

(b) Statues invoked pursuant to Exemption No. 3:

Statutory citation	Number of times (i.e., requests) invoked
50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g	240

(c) Other authority: None

There were 599 other cases in which the requesters were neither given access to nor denied the records sought. None of these cases was regarded as a denial, however, inasmuch as the Agency was either prepared to act upon the requests, or there proved to be no records to act upon. Accordingly, they have not been included in the 263 figure provided in answer to question No. 1, above. In 108 instances, our searches uncovered no records relevant to the requests. In 10 other cases, we found no CIA-originated records, but did locate in our files pertinent third-agency documents--which were subsequently referred to the agency of origin for review and direct response to the requesters. There were 63 instances where the information requested did not fall under CIA's jurisdiction, and the requests were thus referred to the agency or

agencies having cognizance over the records. In 16 cases, requesters appealed on the basis of our failure to respond within the statutory deadline; in another 10 cases, the requesters went into litigation for the same reason. In each of these instances, therefore, the initial processing of the requests progressed into the Agency's appellate or litigation channels. Thirty-nine requests were withdrawn by the requesters after processing had commenced, but before action on them could be completed. Finally, 353 cases were canceled by the Agency because of the failure of requesters to respond to letters asking for clarification, additional identifying information, notarized releases from third parties, fee payments, fee deposits, or written commitments that all reasonable search and/or copying fees would be paid, etc. In each of the latter cases, at least 90 days had elapsed without a reply from the requester before action was taken to discontinue processing.

3. Total number of intra-agency appeals from adverse initial decisions made pursuant to subsection (a)(6): 43

In 22 additional cases, requests which were initially processed under the provisions of the Privacy Act were processed under the Freedom of Information Act upon appeal, in accord with the wishes of the appellants. These were requests for access to personal records, which the CIA usually processes under the Privacy Act rather than the Freedom of Information Act. Also, based upon the failure of the Agency to reply to Freedom of Information requests within 10 working days, 16 appeals were received due to a lack of response.

(a) Number of appeals in which, upon review, request for information was granted in full: 3

(b) Number of appeals in which, upon review, request for information was denied in full: 26

(c) Number of appeals in which, upon review, request was denied in part: 37

4. Authority relied upon for each such appeal determination:

(a) Exemptions in 552(b):

Exemption invoked	Number of times (i.e., appeals) invoked
(b)(1)	50
(b)(2)	1
(b)(3)	64
(b)(4)	1
(b)(5)	4
(b)(6)	16
(b)(7)	3
(b)(8)	0
(b)(9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

Statutory citation	Number of times (i.e., appeals) invoked
50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g	64

5. Names and titles of each person who, on appeal, is responsible for the denial in whole or in part of records requested and the number of instances of participation of each:

Name	Title	No. of instances of participation
Dirks, Leslie C.	Deputy Director for Science and Technology	4
Hart, William N.	Associate Deputy Director for Administration	1
Hineman, Richard E.	Deputy Director, National Foreign Assessment Center	11
McMahon, John N.	Deputy Director for Operations	43
Wortman, Don I.	Former Deputy Director for Administration	17

6. Provide a copy of each court opinion or order giving rise to a proceeding under subsection (a)(4)(F); etc.: None

7. Provide an up-to-date copy of all rules or regulations issued pursuant to or in implementation of the Freedom of Information Act (5 U.S.C. 552):

See Tab A.

8. Provide separately a copy of the fee schedule adopted and the total dollar amount of fees collected for making records available:

See Tab B for a copy of the fee schedule.

The total amount collected and transmitted for deposit in the U.S. Treasury during 1980 was $11,793.32.

9. A. Availability of records:

As the CIA does not promulgate materials as described in 5 U.S.C. 552(a)(2)(A)-(C), no new categories have been published.

In the case of each request made pursuant to the Freedom of Information Act, all reasonably segregable portions of records are released.

B. Costs:

A total of 257,420.5 actual man-hours of labor was devoted during calendar year 1980 to the processing of Freedom of Information, Privacy Act, and mandatory classification review requests, appeals, and litigation. Taking into account leave and holidays, this would equate to approximately 142 full-time personnel. We estimate the average grade for professional employees involved in these programs at GS-12/5, and for clerical employees, GS-06/4. The funds expended during calendar year 1980 on personnel salaries, if overtime payments are ignored, would thus amount to over $2,900,000. If fringe benefits such as retirement and hospitalization are factored in as amounting to 10 percent of the salaries, the total personnel costs come to slightly less than $3,200,000. Of this total, approximately $1,735,000 can be attributed to the Freedom of Information Act.

We have not attempted to calculate such additional costs as office space, equipment rentals, supplies, computer support, etc. It is believed, however, that these expenditures would amount to no more than 5 to 10 percent of the personnel costs.

C. Compliance with time limitations for agency determinations:

(I) Provide the total number of instances in which it was necessary to seek a 10-day extension of time: None

The Agency's processing backlogs have been such that in almost all instances the deadlines for responding to requests and appeals expired prior to our actually working on them. We were seldom in a position, for that reason, to assert that any of the three conditions upon which an extension must be based existed. We have, accordingly, explained the problem to requesters and appellants and apprised them of their rights under the law.

(II) Provide the total number of instances where court appeals were taken on the basis of exhaustion of administrative procedures because the agency was unable to comply with the request within the applicable time limits: 12

In addition, five Privacy Act requesters sued the Agency on the grounds that we had not responded to their requests or appeals in a timely manner. In the litigation, these requests will be considered under the provisions of the Freedom of Information Act, as well as those of the Privacy Act.

(III) Provide the total number of instances in which a court allowed additional time upon a showing of exceptional circumstances, together with a copy of each court opinion or order containing such an extension of time: Two

Copies of the pertinent Orders are attached (Tab C).

D. Internal Memoranda:

See Tab D.

STAT

IPD [redacted] 18 February 1981

Distribution:

Orig. - Adses. w/attachments
1 - IPD Chrono
1 - IPD Subject w/attachments
1 - DDA w/attachments
1 - OGC w/attrachments
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1 - NFAC/FOIO w/attachments
1 - DDO/IMS/FPLG w/attachments
1 - O/DCI/FOIO w/attachments
1 - O/PA w/attachments

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 889

[Docket No. R-80-848]

Section 8 Housing Assistance Payments Program—Computation of Gross Family Contribution

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Correction of Interim Rule.

SUMMARY: On September 9, 1980 at 45 FR 59309 HUD published an interim rule revising the method of computing the Gross Family Contribution in the Section 8 Program. That rule contained several typographical and editorial errors. This publication corrects those errors.

FOR FURTHER INFORMATION CONTACT: Kathleen Beckwith, Rental and Occupancy Branch, U.S. Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755-5840. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The following errors appeared in 24 CFR Part 889 as published in the Federal Register on September 9, 1980:

(a) The effective date of the regulation was incorrectly listed as October 1, 1980. The Supplementary Information Section of the Regulation indicated that "HUD considers it necessary to limit the immediate effect of the statutory changes to families who begin occupancy 60 days after publication of this rule" (p. 59310, first full paragraph). It is our intent to allow 60 days between publication and effective date of the rule to allow adequate time for administrative implementation. Accordingly, the rule is being corrected to show the correct effective date of November 10, 1980.

(b) In the Supplementary Information, on page 59310, second full paragraph, line four, the abbreviation should be [PHAs] instead of [HPHs].

(c) Section 889.105(b). The first word should be "Large" instead of "Larger."

(d) Section 889.105(d)(2). A clause was dropped from the last sentence. The clause "but in no event less than 20 percent of the family's monthly income" should be added.

Accordingly Part 889, published in the Federal Register on September 9, 1980 (45 FR 59309) is corrected as follows:

(1) The Effective Date of October 1, 1980 is corrected to read as follows: EFFECTIVE DATE: November 10, 1980.

(2) The Supplementary Information, third paragraph, fourth line, is corrected to read as follows:

* * * * *

* * * Public Housing Agencies (PHAs) and * * *

* * * * * *

(3) 889.105(b) is corrected to read as follows:

(b) Large Very Low-Income Family or any Lower-Income Family with Exceptional Medical or Other Expenses. * * *

(4) 889.105(d)(2) is corrected by changing the period to a comma in the last sentence and adding a clause to read as follows:

(2) * * * At that time, the family will be required to pay 25 percent of the family's monthly income after allowances, but in no event less than 20 percent of the family's monthly income.

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)))

Issued at Washington, D.C., November 4, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 80-35382 Filed 11-12-80; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 6

[T.D. ATF-74; Corrected]

Unlawful Trade Practices Under the Federal Alcohol Administration Act; Correction

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule; correction.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms is issuing this notice to correct two editorial errors which appeared in Treasury Decision ATF-74 published in the Federal Register on September 23, 1980, (45 FR 63242). That Treasury decision established four new parts relating to unlawful trade practices under the Federal Alcohol Administration Act. The preamble to that rule listed Internal Revenue and ATF rulings which became obsolete with issuance of those regulations. Three rulings were inadvertently omitted from the list of obsolete rulings. These are: IRS Revenue Rulings 54-151, 1954-1 C.B. 338; 54-577, 1954-2 C.B. 592; and ATF Ruling 74-12, 1974 ATF C.B. 51.

Under the recordkeeping provisions in 27 CFR 6.81(b), industry members are required to keep records for items of restricted value furnished to retailers. Two items, wine lists, § 6.86, and inside signs, § 6.84, were incorrectly included as items for which records must be kept. Both should have been omitted since the regulations place no restrictions on the value of inside signs or wine lists which may be furnished to retailers.

DATE: Treasury Decision ATF-74 is effective November 24, 1980.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202-566-7626.

SUPPLEMENTARY INFORMATION:

Authority and Issuance

This correction notice is issued under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended (27 U.S.C. 205).

Accordingly, 27 CFR 6.81 is corrected to read as follows:

§ 6.81 General.

(a) *Application* * * *

(b) *Recordkeeping requirements.* Industry members shall keep and maintain records on the permit premises, for a three year period, of all items furnished to retailers under §§ 6.83, 6.85, 6.88, 6.89, 6.90, 6.91, 6.96(a), and 6.100. Commerical records or invoices may be used to satisfy this recordkeeping requirement if all required information is shown. These records shall show:

* * * * *

Signed: November 5, 1980.

G. R. Dickerson,

Director.

[FR Doc. 80-35388 Filed 11-12-80; 8:45 am]

BILLING CODE 4810-31-M

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1900

Public Access to Documents and Records and Declassification Requests

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: The Central Intelligence Agency (CIA) revises its regulations relating to fees, reduction in fees, and waiver of fees charged in connection with Freedom of Information and certain declassification requests. Changes in

manpower and computer costs since the Agency promulgated the current schedule of fees on February 19, 1975, have necessitated a revision of the fee structure. the intended effect of this revision is to reflect more accurately current levels of costs involved in processing requests and to provide greater detail to the public regarding CIA policies and procedures with respect to fees.

EFFECTIVE DATE: November 13, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Charles E. Savige, Phone (703) 351–5659.

SUPPLEMENTARY INFORMATION: When this rule was proposed on July 24, 1980 (Vol. 45 No. 144, pp. 49296–49297), comments were solicited. One response was received in which the use of the adjective "tangible" was described as unclear and ambiguous. It had been used as a modifier to the word benefit in sentence 3 of 1900.25(a). In consideration of this comment, the adjective identifiable has been substituted. Three typographical errors have also been corrected.

For reasons set out in the preamble, § 1900.25, Chapter XIX of Title 32, Code of Federal Regulations is revised as set forth below.

Don I. Wortman,

Deputy Director for Administration.

§ 1900.25 Fees for records services.

(a) Search and duplication fees shall be charged according to the schedule set forth in paragraph (c) of this section for services rendered in responding to requests for Agency records under this part. Records shall be furnished without charge or at a reduced rate whenever the Coordinator determines that a waiver or reduction of the charge is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Thus, the Coordinator shall determine the existence and extent of any identifiable benefit which would result from furnishing the requested information and he shall consider the following factors in making this determination:

(1) The public or private character of the information sought;

(2) The private interest of the requester;

(3) The numbers of the public to be benefited;

(4) The significance of the benefit to the public;

(5) The usefulness of the information to the public; and

(6) The quantity of similar or duplicative information already in the public domain.

In no case will the assessment of fees be utilized as an obstacle to the disclosure of the requested information. The Coordinator may also waive or reduce the charge whenever he determines that the interest of the government would be served thereby. Fees shall not be charged where they would amount, in the aggregate, for a request, or a series of related requests, to less than $6. Denials of requests for fee waivers may be appealed by writing to the Executive Secretary of the Information Review Committee, via the Coordinator.

(b) In order to protect the requester and the Agency from large, unexpected fees, when it is anticipated that the charges will amount to more than $25, the processing of the request shall be suspended until the requester indicates his willingness to pay. The requester shall be notified and asked for his commitment to pay all reasonable search and duplication fees. At his option, the requester may indicate in advance a dollar limitation to the fees. In such an event, the Coordinator shall initiate a search of the system or systems of records deemed most likely to produce relevant records, instructing the system managers to discontinue the search as soon as the stipulated amount has been expended. Where an advance limit has not been stipulated, the Coordinator may, at his discretion or at the behest of the requester, compile an estimate of the search fees likely to be incurred in processing a request, or of such portion thereof as can readily be estimated. The requester shall be promptly notified of the amount and be asked to approve its expenditure. In those cases where the Coordinator estimates that the fees will be substantial, an advance deposit of 50 percent of the estimated fees will be required; in those cases where there is reasonable evidence that the requester may possibly fail to pay the fees which would be accrued by processing his request, an advance deposit of 100 percent of the estimated fees will be required. The notice or request for an advance deposit shall extend an offer to the requester whereby he is afforded an opportunity to revise the request in a manner calculated to reduce the fees. Dispatch of such a notice or request shall suspend the running of the period for response by the Agency until a reply is received from the requester.

(c) The schedule of fees for services performed in responding to requests for Agency records is established as follows:

(1) For each one quarter hour, or fraction thereof, spent by clerical personnel in searching for a record, $1.50;

(2) For each one quarter hour, or fraction thereof, spent by professional personnel in searching for a record, $3.50;

(3) For each on-line computer search, $11.00;

(4) For each off-line (batch) computer search of Central Reference files, $27.00;

(5) For all other off-line computer searches of Agency files, $8.00 per minute of Central Processing Unit (CPU) time;

(6) For copies of paper documents in sizes not larger than 8½ × 14 inches, $0.10 per copy of each page;

(7) For duplication of non-paper media (film, magnetic tape, etc.) or any document that cannot be reproduced on a standard office copier, actual direct cost; and

(8) For extra copies of reports, maps, reference aids, and other Agency publications, actual cost.

(d) Inasmuch as the Agency's systems of records are highly decentralized, several computer searches may be required to process a request, depending upon its scope. The computer search costs given in paragraph (c), of this section, do not include whatever professional/clerical search time is needed to determine whether the records located are in fact responsive to the request.

(e) Search fees are assessable even when no records pertinent to the requests, or no releasable records are found, provided the requester has been advised of this fact and he has, that notwithstanding agreed to incur the costs of search.

(f) For requests which have accrued substantial search and duplication fees, or for requests for records which have been previously released, or where there is reasonable evidence that the requester may possibly fail to pay the accrued fees, then, at the discretion of the Coordinator, the requester may be required to pay the accrued search and duplication fees prior to the actual delivery of the requested records; otherwise, the requester shall be billed for such fees at the time that the records are provided. Payment shall be remitted by check or money order, made payable to the Treasurer of the United States, and shall be sent to the Coordinator. No appeals or additional requests shall be accepted for processing until the requester has paid all outstanding charges for services rendered under this part.

(Sec. 102 of the National Security Act of 1947, as amended (50 U.S.C. 430), the Central Intelligence Act of 1949, as amended (50 U.S.C. 403 et seq.), Executive Order 12065 (3

involving the waste processing industries and purchasers and users of cotton batting is still before the D.C. Circuit, and the judicial stay of the standard as to those industries remains in effect. A stay of the cotton ginning standard issued by the Court of Appeals for the Fifth Circuit also remains in effect.

Petitions for Supreme Court review of the D.C. Circuit's October 24, 1979 decision were filed by the American Textile Manufacturers Institute and several individual textile manufacturers, the Cotton Warehouse Association and American Cotton Shippers Association (representing the cotton warehousing industry and cotton classing offices), and the National Cotton Council of America (representing the entire cotton industry). The Secretary of Labor's brief in opposition to these petitions will be filed with the Supreme Court on July 28, 1980.

On July 2, 1980, the Supreme Court affirmed the judgment of the Court of Appeals for the Fifth Circuit invalidating OSHA's standard for occupational exposure to benzene. *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute* (Nos. 78–911 and 78–1036). Briefly, the Supreme Court ruled that when regulating a toxic substance, the Secretary of Labor must find, as a threshold matter, that the substance poses a significant risk of material impairment and that the new, lower standard will eliminate or reduce that risk.

After reviewing the Supreme Court's benzene decision, the administrative rulemaking record on cotton dust, and the preamble to the cotton dust standard, OSHA has made a preliminary determination that the statement of basis and purpose in the cotton dust preamble may not adequately describe the rationale for including cotton warehousing and cotton classing offices. OSHA is now undertaking a more extensive review and analysis of the preamble and rulemaking record to determine the possible regulatory options with respect to cotton warehousing and cotton classing offices. Given the likelihood of further administrative action on the standard as it applies to these two industries OSHA is suspending enforcement of the standard in these two industries until this reconsideration is completed. Public notice will be given if further administrative proceedings are undertaken.

During this period when enforcement of the new standard is suspended, OSHA will enforce the preexisting national consensus standard for exposure to cotton dust (29 CFR 1910.1000, Table Z–1) in the cotton warehousing and cotton classing industries. This is in accordance with OSHA's express intent to provide continued protection to workers until the provisions of the new standard are fully effective and enforceable. See 43 FR 27350, Column 2.

This action does not affect the enforcement of the new standard in the textile manufacturing industry, as to which a determination has been made that the standard meets the Supreme Court's requirements, or in any non-textile industries other than classing and warehousing.

Signed at Washington, D.C. this 25th day of July 1980.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 80-22853 Filed 7-28-80; 8:45 am]

BILLING CODE 4510-26-M

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1900

Public Access to Documents and Records and Declassification Requests

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: The Central Intelligence Agency (CIA) revises its regulations relating to the composition of the Information Review Committee (IRC) by removing direct representation on the IRC for the Intelligence Community Staff (ICS). With Congress separately funding the ICS, it is no longer appropriate for the ICS to have direct representation on the IRC, which is an integral part of the Central Intelligence Agency. This revision will overcome this anomaly.

EFFECTIVE DATE: July 29, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. John E. Bacon, Information and Privacy Coordinator; phone: 351-7486.

SUPPLEMENTARY INFORMATION: The IRC is the senior CIA policymaking body on matters pertaining to the Freedom of Information and Privacy Acts and the mandatory declassification review provisions of Executive Order 12065. The removal of the Deputy to the Director of Central Intelligence for the Intelligence Community and the Deputy to the Director of Central Intelligence for National Intelligence Officers from the IRC merely reflects internal organizational changes that have already occurred. This does not preclude the participation of representatives from any component on matters in which there is a direct and specific equity. This participation is clearly stated in the final sentence of the section being revised. Since this action being taken is purely administrative, there is no utility in receiving public comment.

In consideration of the foregoing, Part 1900, Chapter XIX of Title 32, Code of Federal Regulations, is amended by revising 1900.51(a) as follows:

§ 1900.51 Appeal to CIA Information Review Committee.

(a) Establishment of Committee. The Central Intelligence Agency Information Review Committee is hereby established, pursuant to the Freedom of Information Act and section 5–404(c) of Executive Order 12065. The Committee shall be composed of the Deputy Director for Administration, the Deputy Director for Operations, the Deputy Director for Science and Technology, and the Director, National Foreign Assessment Center. The Director of Central Intelligence shall appoint a chairman. The Committee, by majority vote, may delegate to one or more of its members the authority to act on any appeal or appeals under this section, and may authorize the chairman to delegate such authority. The chairman may call upon appropriate components to participate when special equities or expertise are involved.

* * * * *

(Sec. 102 of the National Security Act of 1947, as amended (50 U.S.C. 403), the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a et seq.), E.O. 12065 (3 CFR, 1978 comp., p. 190), and the Freedom of Information Act, as amended (5 U.S.C. 552))

Don I. Wortman,

Deputy Director for Administration.

[FR Doc. 80-22741 Filed 7-28-80; 8:45 am]

BILLING CODE 6310-02-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

Tribal Purchase of Interests Under Special Statutes

AGENCY: Office of Hearings and Appeals, Department of the Interior.

ACTION: Final rule.

SUMMARY: This office is revising its procedural regulations which carry out the objectives of the tribal purchase statutes, cited below. The purpose of the revisions, which incorporate suggestions offered by interested persons as well as by the tribes concerned, is to improve

§ 1615.2 Responsibility of Director of Selective Service in Registration.

Whenever the President by proclamation or other public notice fixes a day or days for registration, the Director of Selective Service shall take the necessary steps to prepare for registration and, on the day or days fixed, shall supervise the registration of those persons required to present themselves for and submit to registration. The Director of Selective Service shall also arrange for and supervise the registration of those persons who present themselves for registration at times other than on the day or days fixed for any registration.

§ 1615.3 Registration procedures.

Persons required by selective service law and the Proclamation of the President to register shall be registered in accord with procedures prescribed by the Director of Selective Service.

§ 1615.4 Duty of persons required to register.

A person required by selective service law to register has the duty.

(a) To complete the Registration Card prescribed by the Director of Selective Service and to record thereon his name, date of birth, sex, Social Security Account Number (SSAN), current mailing address, permanent residence, telephone number, date signed, and signature; and

(b) To submit for inspection evidence of his identity at the time he submits his completed Registration Card to a person authorized to accept it. Evidence of identity may be a birth certificate, motor vehicle operator's license, student's identification card, United States Passport, or a similar document.

§ 1615.5 Persons not to be registered.

No person who is not required by selective service law or the Proclamation of the President to register shall be registered.

§ 1615.6 Selective service number.

Every registrant shall be given a selective service number. The Social Security Account Number will not be used for this purpose.

§ 1615.7 Evidence of registration.

The Director of Selective Service Shall issue to each registrant written evidence of his registration. The Director of Selective Service will replace that evidence upon written request of the registrant, but such request will not be granted more often than once in any period of six months.

§ 1615.8 Cancellation of registration.

The Director of Selective Service may cancel the registration of any particular registrant or of a registrant who comes within a specified group of registrants.

§ 1615.9 Registration Card or Form.

For the purposes of these regulations, the terms Registration Card and Registration Form are synonomous.

PARTS 1617, 1619 [Revoked]

§§ 1621.2, 1621.3 [Revoked]

3. Parts 1617 and 1619 and sections 1621.2 and 1621.3 are revoked.

Issued: July 17, 1980.

Bernard Rostker,

Director.

[FR Doc. 80-21837 Filed 7-17-80; 9:35 am]

BILLING CODE

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1900

Public Access to Documents and Records and Declassification Requests

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: The Central Intelligence Agency (CIA) amends its regulations relating to public access to documents and records by clarifying policies and procedures regarding historical research requests. Based upon the Agency's experience in handling requests from historical researchers for access to classified information held in the file systems, a modification of the regulation is necessary. The amendment will allow the CIA to process such requests with less burden upon its limited resources. This document also corrects the text by setting forth language which was inadvertently omitted when first promulgated.

EFFECTIVE DATE: July 18, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Charles E. Savige, Phone: (703) 351-5659.

SUPPLEMENTARY INFORMATION: This final rule was promulgated as a proposed rule on May 6, 1980, and comments were invited. On May 21, 1980, this Agency received a memorandum from the Director, Information Security Oversight Office, recommending the deletion of the word "rare" in line 11 of the promulgation. This recommendation has been accepted and the word is deleted. There were no other comments received.

In consideration of the foregoing, Part 1900, Chapter XIX of Title 32, Code of Federal Regulations, is amended by revising paragraph (a) of 1900.61 to read as follows:

§ 1900.61 Access for historical research.

(a) Any person engaged in a historical research project may submit a request, in writing, to the Coordinator to be given access to information classified pursuant to an Executive order for purposes of that research. Any such request shall indicate the nature, purpose, and scope of the research project. It is the policy of the Agency to consider applications for historical research privileges only in those instances where the researcher's needs cannot be satisfied through requests for access to reasonably described records.

* * * * *

This amendment to the rules and regulations of the Central Intelligence Agency is adopted under the authority of Section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403), the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a et seq.), Executive Order 12065 (3CFR, 1978 Comp., p. 190), the Freedom of Information Act, as amended (5 U.S.C. 552), and the Federal Records Management Amendments of 1978 (Sec. 4, Pub. L. 94-575, 90 Stat. 2723).

Don I. Wortman,

Deputy Director for Administration.

[FR Doc. 80-21701 Filed 7-17-80; 8:45 am]

BILLING CODE 6310-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1541-5]

Approval and Promulgation of Implementation Plans; Massachusetts Revisions; Correction

AGENCY: U.S. Environmental Protection Agency.

ACTION: Correction, final rule.

SUMMARY: This document corrects a final rule approving revisions to the Massachusetts Implementation Plan appearing in the Federal Register on June 17, 1980 (45 FR 40987).

FOR FURTHER INFORMATION CONTACT: Margaret McDonough, USEPA Region 1, (617) 223-4448.

SUPPLEMENTARY INFORMATION:

In FR Doc. 80-18136 appearing at page 40987 in the Federal Register of June 17, 1980 the following change should be made: On pages 40988 and 40989 subparagraph (28) of § 52.1120, paragraph (c) is corrected to read: subparagraph (29).

Dated; July 10, 1980.

William R. Adams, Jr.,

Regional Administrator, Region I.

[FR Doc. 80-21710 Filed 7-17-80; 8:45 am]

BILLING CODE 6560-01-M

loss provided a proper election is made in the taxpayer's original or amended return for the first taxable year ending on or after October 1, 1978, in which such a nonproductive well is completed. The taxpayer must make a clear statement of election under this option in the return or amended return. The election may be revoked by the filing of an amended return that does not contain such a statement. The absence of a clear indication in such return of an election to deduct as ordinary losses intangible drilling and development costs of nonproductive wells shall be deemed to be an election to recover such costs through depletion to the extent that they are not represented by physical property, and through depreciation to the extent that they are represented by physical property. Upon the expiration of the time for filing a claim for credit or refund of any overpayment of tax imposed by chapter 1 of the Code with respect to the first taxable year ending on or after October 1, 1978 in which a nonproductive well is completed, the taxpayer is bound for all subsequent years by his exercise of the option to deduct intangible drilling and development costs of nonproductive wells as an ordinary loss or his deemed election to recover such costs through depletion or depreciation.

(c) *Nonoptional items distinguished. (1) Capital Items:* The option with respect to intangible drilling and development costs does not apply to expenditures by which the taxpayer acquires tangible property ordinarily considered as having a salvage value. Examples of such items are the costs of the actual materials in those structures which are constructed in the wells and on the property, and the cost of drilling tools, pipe, casing, tubing, tanks, engines, boilers, machines, etc. The option does not apply to any expenditure for wages, fuel, repairs, hauling, supplies, etc., in connection with equipment, facilities, or structures, not incident to or necessary for the drilling of wells, such as structures for treating geothermal steam or hot water. These are capital items and are recoverable through depreciation.

(2) *Expense items:* Expenditures which must be charged off as expense, regardless of the option provided by this section, are those for labor, fuel, repairs, hauling, supplies, etc., in connection with the operation of the wells and of other facilities on the property for the production of geothermal steam or hot water.

(d) *Manner of making election.* The option granted in paragraph (a) of this section to charge intangible drilling and development costs to expense may be exercised by claiming intangible drilling and development costs as a deduction on the taxpayer's original or amended return for the first taxable year ending on or after October 1, 1978, in which the taxpayer pays or incurs such costs with respect to a geothermal well commenced on or after that date. No formal statement is necessary. The exercise of the option may be revoked by the filing of an amended return that does not claim such a deduction. If the taxpayer fails to deduct such costs as expenses in any such return, he shall be deemed to have elected to recover such costs through depletion to the extent that they are not represented by physical property, and through depreciation to the extent that they are represented by physical property. Upon the expiration of the time for filing a claim for credit or refund of any overpayment of tax imposed by chapter 1 of the Code with respect to the first taxable year ending on or after October 1, 1978, in which the taxpayer pays or incurs intangible drilling and development costs with respect to a geothermal well commenced on or after that date, the taxpayer is bound by his exercise of the option to charge such costs to expense or his deemed election to recover such costs through depletion or depreciation for that year and for all subsequent years.

(e) *Effective date.* The option granted by paragraph (a) of this section is available only for taxable years ending on or after October 1, 1978, with respect to geothermal wells commenced on or after that date.

There is need for the immediate guidance provided by the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 263 and 7805 of the Internal Revenue Code of 1954 (92 Stat. 3201; 26 U.S.C. 263; 68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: January 16, 1980.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 80-2944 Filed 1-29-80; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 43-80]

Exemption of Records Systems Under the Privacy Act; Revocation of an Exemption

AGENCY: Department of Justice, Law Enforcement Assistance Administration (LEAA).

ACTION: Revocation Rule.

SUMMARY: As explained in the Notice Section of today's Federal Register, LEAA's Office of Audit and Investigation is rescinding its system of records entitled "General Investigative System, JUSTICE/LEAA-003". This notice was most recently published in a Federal Register on September 30, 1977 and again in the Federal Register document identified as the Privacy Act issuances, 1978 Compilation, Volume III. It was originally published on August 27, 1975, along with a proposed rule to exempt the system from subsections (d), (e)(4) (G) and (H), and (f) of the Privacy Act.

Because the system of records is rescinded, paragraphs (a), (b), and (c) of 28 CFR 16.100 are unnecessary and are being revoked.

DATES: Revocation of the exemption is effective January 30, 1980.

ADDRESSES: Administrative Counsel, Justice Management Division, Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: William J. Snider (202-633-3452).

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793-78, paragraphs (a), (b) and (c) of 28 CFR 16.100 are hereby revoked, paragraph (d) is hereby redesignated paragraph (a), and paragraph (e) is hereby redesignated paragraph (b).

Dated: January 22, 1980.

Kevin D. Rooney,

Assistant Attorney General for Administration.

[FR Doc. 80-2979 Filed 1-29-80; 8:45 am]

BILLING CODE 4410-18-M

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1900

Public Access to Documents and Records and Declassification Requests

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: The United States District Court for the District of Columbia on September 27, 1979, ordered the Central Intelligence Agency to publish applicable rules and regulations relating to the Agency's Reading Room and access thereto. In compliance with this order, a proposed rule was promulgated in the Federal Register on November 15, 1979.

The regulations establish procedures for the general public to access and review any records which have been approved for release in response to Freedom of Information Act requests.

DATES: Effective January 30, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. George W. Owens, Chief, Information and Privacy Division, Central Intelligence Agency, Washington, D.C. 20505; phone: (703) 351-7486.

SUPPLEMENTARY INFORMATION: The Court ordered on September 27, 1979, that by November 30, 1979, the Agency must inform the general public of its Rules and Regulations for access by the general public to review records which have been approved for release to the general public in response to Freedom of Information Act requests at an Agency Reading Room. The Agency did so inform the public by publishing a proposed rule in the Federal Register at Vol. 44, No. 222, pp. 65780-65781, November 15, 1979.

The Central Intelligence Agency offered to receive comments from the general public regarding the proposed rule. The public was informed that all written comments, that were received by January 7, 1980, would be considered before adoption of a final rule. The Agency received two comments. One individual wrote that the proposed rule was unclear in that it did not adequately state that any member of the general public could access and review records which had been approved for release to another requester. Another individual took exception to the language used in describing the conditions of access to the Reading Room. The Agency has accordingly modified the rule as published in the Federal Register on November 15, 1979, in order to clarify the expressed areas of concern.

This Central Intelligence Agency Rule and Regulation is adopted. It is entered at Title 32 Code of Federal Regulations, Part 1900, paragraph (c) of § 1900.49, Notification and payment; furnishing records. Rules and Regulations previously promulgated can be found in the Federal Register at Vol. 40, No. 34, pp. 7294-7298, February 19, 1975; Vol. 40, No. 113, pg. 24897, June 11, 1975; Vol. 42, No. 92, pg. 24049, May 12, 1977; and, Vol. 43, No. 109, pg. 24527, June 6, 1978.

PART 1900—PUBLIC ACCESS TO DOCUMENTS AND RECORDS AND DECLASSIFICATION REQUESTS

In consideration of the foregoing, the Central Intelligence Agency adopts the amendment to 32 CFR Part 1900 by adding a new paragraph (c) to § 1900.49 to read as follows:

§ 1900.49 Notification and payment; furnishing records.

* * * * *

(c) As an alternative to any Freedom of Information Act requester receiving any records from the Agency by mail, a requester may arrange to inspect the records at a CIA Reading Room. The requester may be the person who initially requested the records or the requester may be someone who was not a party to that request. The Information and Privacy Coordinator will designate a Reading Room for the purposes of records inspection, and the requester may select whatever records the requester wishes to purchase at a cost set forth in § 1900.25. Access to the Reading Room will be granted only after the fees that accumulated from the search to produce the requested records have been paid, or waived by the Information and Privacy Coordinator pursuant to § 1900.25(a). Upon receipt of a written statement from the requester exercising this option, the Coordinator will advise the requester of the location of the Reading Room and provide directions thereto. Unless otherwise designated, the Reading Room location will be in the metropolitan Washington, D.C. area. Records that the Agency will release will be available for inspection in the Reading Room on a date or dates mutually agreed upon by the Coordinator and the requester, not more than seven days from the Agency's receipt of the written request or from completion of the processing of the request for records, whichever is later. The requester may agree to a date or dates more than seven days from such time. On the days the Reading Room is open, it will be available to requesters from 9:30 a.m. to 3:30 p.m.

This amendment to rules and regulations of the Central Intelligence Agency is adopted under the authority of Section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403), The Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a et seq.), Executive Order 12065 (3 CFR 190), the Freedom of Information Act, as amended (5 U.S.C. 552), and the Federal Records Management Amendments of 1978 (Sec. 4, Pub. L. 94-575, 90 Stat. 2723).

Don I. Wortman,
Deputy Director for Administration.

[FR Doc. 80-2832 Filed 1-29-80; 8:45 am]
BILLING CODE 6310-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1401-8]

Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The purpose of this Notice is to approve, in part, the State Implementation Plan (SIP) revisions for Vermont which were received by the Environmental Protection Agency (EPA) on March 21 and November 21, 1979, pertaining to program to review new and modified major stationary sources in attainment areas.

These plan revisions were prepared by the state, in part, to meet the requirments of Part C (Prevention of Significant Deterioration of Air Quality) (PSD), as amended in 1977. On July 9, 1979 (44 FR 40078), EPA published a Notice of Proposed Rulemaking (NPR) which described these revisions, and requested public comment. No comments have been received on the PSD portion of the revisions.

EPA is approving the program to review new and modified major stationary sources in attainment areas, except a portion of the narrative and a regulation pertaining to default permits. A subsequent Notice will discuss the rest of the revisions.

EFFECTIVE DATE: January 25, 1980.

FOR FURTHER INFORMATION CONTACT: Frank J. Ciavattieri, Chief, Air Branch, Environmental Protection Agency, Region I, JFK Federal Building, Room 1903, Boston, Massachusetts 02203 (617)223-6883.

SUPPLEMENTARY INFORMATION: Part C and section 110(a)(2)(D) of the Clean Air Act (the Act) establish limitations on the deterioration of air quality in those parts of the Nation where the air quality is better than required by National Ambient Air Quality Standards (NAAQS).

The amount of deterioration permitted is quantified by a table of air quality increments which appears in section 163 of the Act. In effect, increments

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1900

Public Access to Documents and Records and Declassification Requests

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

EFFECTIVE DATE: November 13, 1980.

§ 1900.25 Fees for records services.

(a) Search and duplication fees shall be charged according to the schedule set forth in paragraph (c) of this section for services rendered in responding to requests for Agency records under this part. Records shall be furnished without charge or at a reduced rate whenever the Coordinator determines that a waiver or reduction of the charge is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Thus, the Coordinator shall determine the existence and extent of any identifiable benefit which would result from furnishing the requested information and he shall consider the following factors in making this determination:

(1) The public or private character of the information sought;

(2) The private interest of the requester;

(3) The numbers of the public to be benefited;

(4) The significance of the benefit to the public;

(5) The usefulness of the information to the public; and

(6) The quantity of similar or duplicative information already in the public domain.

In no case will the assessment of fees be utilized as an obstacle to the disclosure of the requested information. The Coordinator may also waive or reduce the charge whenever he determines that the interest of the government would be served thereby. Fees shall not be charged where they would amount, in the aggregate, for a request, or a series of related requests, to less than $6. Denials of requests for fee waivers may be appealed by writing to the Executive Secretary of the Information Review Committee, via the Coordinator.

(b) In order to protect the requester and the Agency from large, unexpected fees, when it is anticipated that the charges will amount to more than $25, the processing of the request shall be suspended until the requester indicates his willingness to pay. The requester shall be notified and asked for his commitment to pay all reasonable search and duplication fees. At his option, the requester may indicate in advance a dollar limitation to the fees. In such an event, the Coordinator shall initiate a search of the system or systems of records deemed most likely to produce relevant records, instructing the system managers to discontinue the search as soon as the stipulated amount has been expended. Where an advance limit has not been stipulated, the Coordinator may, at his discretion or at the behest of the requester, compile an estimate of the search fees likely to be incurred in processing a request, or of such portion thereof as can readily be estimated. The requester shall be promptly notified of the amount and be asked to approve its expenditure. In those cases where the Coordinator estimates that the fees will be substantial, an advance deposit of 50 percent of the estimated fees will be required; in those cases where there is reasonable evidence that the requester may possibly fail to pay the fees which would be accrued by processing his request, an advance deposit of 100 percent of the estimated fees will be required. The notice or request for an advance deposit shall extend an offer to the requester whereby he is afforded an opportunity to revise the request in a manner calculated to reduce the fees. Dispatch of such a notice or request shall suspend the running of the period for response by the Agency until a reply is received from the requester.

(c) The schedule of fees for services performed in responding to requests for Agency records is established as follows:

(1) For each one quarter hour, or fraction thereof, spent by clerical personnel in searching for a record, $1.50;

(2) For each one quarter hour, or fraction thereof, spent by professional personnel in searching for a record, $3.50;

(3) For each on-line computer search, $11.00;

(4) For each off-line (batch) computer search of Central Reference files, $27.00;

(5) For all other off-line computer searches of Agency files, $8.00 per minute of Central Processing Unit (CPU) time;

(6) For copies of paper documents in sizes not larger than 8½ × 14 inches, $0.10 per copy of each page;

(7) For duplication of non-paper media (film, magnetic tape, etc.) or any document that cannot be reproduced on a standard office copier, actual direct cost; and

(8) For extra copies of reports, maps, reference aids, and other Agency publications, actual cost.

(d) Inasmuch as the Agency's systems of records are highly decentralized, several computer searches may be required to process a request, depending upon its scope. The computer search costs given in paragraph (c), of this section, do not include whatever professional/clerical search time is needed to determine whether the records located are in fact responsive to the request.

(e) Search fees are assessable even when no records pertinent to the requests, or no releasable records are found, provided the requester has been advised of this fact and he has, that notwithstanding agreed to incur the costs of search.

(f) For requests which have accrued substantial search and duplication fees, or for requests for records which have been previously released, or where there is reasonable evidence that the requester may possibly fail to pay the accrued fees, then, at the discretion of the Coordinator, the requester may be required to pay the accrued search and duplication fees prior to the actual delivery of the requested records; otherwise, the requester shall be billed for such fees at the time that the records are provided. Payment shall be remitted by check or money order, made payable to the Treasurer of the United States, and shall be sent to the Coordinator. No appeals or additional requests shall be accepted for processing until the requester has paid all outstanding charges for services rendered under this part.

31 July 80

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GARY SHAW, :

Plaintiff, :

v. : Civil Action No. 80-1056

DEPARTMENT OF STATE, et al., :

Defendants. :

ORDER

Defendant, Central Intelligence Agency, has moved for modification of the Court's oral ruling of July 15, 1980 to extend to one hundred fifty days, in lieu of the sixty days then ordered, time for processing of its documents, preparation of an index under Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974) and the filing of dispositive motions, if any.

The defendant's persuasive argument encourages acceptance. The defendant Agency, with its overburdened, understaffed, depleted processors, is not an exception among government agencies, chronically and similarly affected, making it increasingly difficult for the courts to square reality with the mandate and spirit of expediting all Freedom of Information Act requests.

The affidavit of Maurice A. Sovern, Chief of the Freedom of Information, Privacy and Litigation Group, Directorate of Operations, Central Intelligence Agency (CIA), buttressed by agency records, expresses the general and customarily most equitable practice of "first-in, first-out" principle in responding to these requests, and seems to indicate present due diligence in processing the instant request.

Plaint

When plaintiff's complaint was filed April 25, 1980, 188 requests ahead of plaintiff's earliest request in point of time were still awaiting processing; 1258 requests were ahead of plaintiff's latest request.

As a result of the present litigation and the Court's above order the four requests have now been advanced for processing as a group to the head of the Directorate of Operations processing queue. The Sovern Affidavit contends nonetheless, not without merit, that 1) because of other court orders entered prior to the order of this Court (nine litigation instances have document collections to be processed, which are dated for purposes of precedence, earlier than plaintiff's complaint), 2) operational demands imposed upon the Directorate of Operations and 3) the amount of time reasonably required to apropriately review the questioned documents will require more than the sixty days granted. The defendant seeks five months in order to accomplish the task at hand.

Although the plaintiff has every right to demand compliance with the statutory mandate of expedition, the defendant's position also cannot be minimized. Requests to the CIA, this country's intelligence organization, not infrequently involve highly sensitive, classified information which obviously requires complex, time-consuming search and study to retrieve responsive documents and to make judgments, from the defendant's view, whether an exemption to releasability of these intelligence records will be claimed. Additionally, in this case, the defendant CIA asserts that the individuals who are the subject of plaintiff's request are allegedly engaged in international criminal activity, including the illegal sale of narcotics; among other problems unique to this matter, a variety of aliases, in one instan

certain information about individuals, at least one of whom he asserts had a "probable participation in the death of the President [John F. Kennedy]" (plaintiff's exhibit M) and two individuals he refers to variously as "premier assassin", "heroin smuggler", "professional killer", "counter-terrorist".

The defendant, CIA, having shown exceptional circumstances exist and exhibiting good faith by now expediting the processing with additional diligence, will be granted reasonable time, balanced against the statutory mandate, to complete its review of the records.

Accordingly, it is, by the Court, this 31st day of July, 1980,

ORDERED that this Court's oral ruling of July 15, 1980 be and it hereby is modified, and the Central Intelligence Agency shall have to and including November 14, 1980 within which to complete its processing of the documents, prepare an index and justification for withholding under Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974) and make its dispositive motion, if any. Those documents as to which releasability is not an issue shall be released to the plaintiff as promptly as that determination is made.

Joyce Hens Green

JOYCE HENS GREEN
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR NATIONAL SECURITY STUDIES, et al., Plaintiffs, vs. CENTRAL INTELLIGENCE AGENCY, et al., Defendants.	Civil Action No. 80-1235

STIPULATION AND ORDER

The parties by and through the undersigned counsel stipulate and agree as follows:

1. This stipulation is entered into by the parties to settle partially the dispute between them by setting a processing schedule for completing the processing of the FOIA requests underlying the remaining unprocessed counts in the above-captioned action (Counts I-V, X and IX), thereby avoiding the necessity for submitting the question of processing time limits on those counts to this Court for decision. This stipulation is neither an admission by the plaintiffs that the CIA utilizes a system for processing Freedom of Information Act (FOIA) requests which is legally unobjectionable nor an admission by the defendants that they have failed to demonstrate the necessary predicate to justify a stay of the action and a remand to the agency for processing of the FOIA requests described in counts I, II, III, IV, V,

a. The document is released in its entirety to the plaintiffs by the defendants; or

b. The document is released in redacted form to the plaintiffs by the defendants pursuant to one or more exemptions of the FOIA; or

c. Plaintiffs have been advised by defendants that the document is denied in its entirety pursuant to one or more exemptions of the FOIA; or

d. The document is referred either in whole or in part by defendants to another agency or department of the United States for review for releasability of information which originated with or which concerns such agency or department; or

e. The document is referred to an appropriate official, committee, or subcommittee of the United States House of Representatives or United States Senate to determine whether such official, committee, or subcommittee objects to the release of the document on either or both of the following grounds: (1) the document is a "congressional" as opposed to an "agency" record and accordingly is outside the scope of the FOIA; or (2) the document reflects sensitive or confidential deliberations between the defendants and members of the United States House of Representatives or the United States Senate, their committees, or

f. The CIA agrees to use its "best efforts" to persuade any agency or congressional committee or official to complete review of any document referred to it in the time set by this stipulation for completion of processing of the request to which that document is responsive.

3. The CIA will complete the processing of the FOIA requests underlying Counts I, II and IV of the Complaint between January 15-31, 1981.

4. The CIA will complete the processing of the FOIA requests underlying Counts III and X of the Complaint between March 15-31, 1981.

5. The CIA will move the FOIA requests underlying Counts V and IX to the head of the queue of FOIA requests awaiting processing.

6. The CIA will complete the processing of the approximately 2,000 pages responsive to the FOIA request underlying Count IX between August 1-15, 1981.

7. The CIA will review the approximately 4,000 to 5,000 pages of documents potentially responsive to the FOIA request underlying Count V within 20 working days (excluding holidays recognized by the federal government) from the date of this stipulation to find any and all documents which are responsive to that FOIA request which for purposes of this stipulation has been narrowed as follows to include:

a. Any and all documents which originated prior to the date of the assassination of Richard Welch which indicate that his CIA assignment

b. Any and all documents which originated after the date of the assassination of Richard Welch which indicate what the Agency, its officers or employees knew or should have known that bore on the risks to Welch arising from his CIA assignment in Greece;

c. Any and all documents, other than openly available magazine articles, newspaper articles or the like, which bear on the question whether the assassination of Richard Welch was either connected or unconnected to the publication of one or more articles relating to Richard Welch which was published in CounterSpy, an American publication;

d. Any and all documents which reflect communications between Angus Thuermer or other CIA officials and the press regarding the assassination of Richard Welch.

After the review of the potentially responsive documents is completed to identify the number of pages responsive to the request as narrowed, the CIA will complete the processing of the Welch request with respect to the documents identified within a period of time proportionate to that established in paragraph 6 for Count IX (e.g. 2000 pages require seven months, 1000 pages require three and one half months, etc.), but in any event not less than 10 working days.

The plaintiffs reserve the right, after the processing of the request as narrowed is completed, to reinstate the

within a period of time proportionate to that established in paragraph 6 for Count IX (e.g. 2000 pages require seven months, 1000 pages require three and one half months, etc.).

8. The CIA will release documents processed exclusively by it which are responsive to the requests underlying Counts I, II, and IV as they are reviewed, redacted and completely processed.

9. Plaintiffs have the right to ask this Court to enforce any deadline set by this stipulation. If at any time during the period this stipulation remains in effect the CIA becomes aware of facts, not now known, which make it impossible to meet an agreed upon deadline, the CIA shall notify plaintiffs immediately of the new facts and the amount of extra time needed to complete processing. If the parties cannot reach an agreement as to the proper manner to complete processing of any request in light of newly discovered facts, the Court may extend the agreed upon deadline by the amount of time it finds necessary to allow the CIA to complete processing.

10. While this stipulation is in effect, the parties request that the Court take no action on the plaintiffs' "Motion for Summary Judgment on Counts I-IV" and the defendants' "Motion to Stay the Proceedings and Remand Counts I, II, III, IV, V, IX and X to the Central Intelligence Agency for Processing."

11. The parties wish to proceed with other pending motions, namely, defendants' "Motion to Dismiss or in the

a. Plaintiffs will file a supplemental memo, if necessary, on or before January 8, 1981;

b. Defendants will file a responsive memo, if necessary, on or before January 19, 1981.

12. If the Court, over the strenuous objection of defendants, grants plaintiffs' discovery motion, the parties agree, with the Court's permission, that the defendants can defer commencing work on discovery until February 1, 1981 so that the defendants' ability to complete the processing of Counts I, II and IV between January 15-31, 1981 is not impaired. The plaintiffs further agree that they will give careful consideration to the adoption of any reasonable plan for the completion of discovery submitted by the CIA if the CIA notifies plaintiffs that it believes that responding to discovery in the normal period allowed under the Federal Rules of Civil Procedure would substantially interfere with the CIA's ability to comply with the deadlines agreed upon in this stipulation.

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